

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013010226

ORDER GRANTING SECOND
REQUEST FOR CONTINUANCE [NO
FURTHER] AND SETTING PHC/HRG

On February 28, 2013, the parties filed a second request for a continuance. An earlier second request for a continuance had been denied by OAH because it did not contain an adequate explanation of good cause for a continuance. In the instant request, the parties assert that they relied on information from an ALJ at mediation that a continuance for assessments would likely be granted, that the currently sought dates are not that much farther than could have been obtained on first continuance, and that it is not in the parties control when an assessment being conducted for settlement purposes will be completed.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Granted. All dates are vacated. Good cause was established by the parties' uncertainty about how to proceed with getting a sufficient continuance after mediation, and the fact that ultimately, the instant continuance will result in the hearing occurring within five and a half months from the date the complaint was filed.

However, **no further continuances are contemplated for any reason.** OAH rejects the parties' position that it is good cause because it is out of their control when the assessment, agreed to by the parties as part of settlement discussions, will be completed. To the contrary, the parties are completely in control of hiring an assessor who is available and can complete the work in a reasonable amount of time. Even now, the parties represent that they do not know exactly when the assessment would be completed. The IDEA expects District assessments to be conducted and an IEP team meeting held within 60 days, such that it is not unreasonable to hold independent assessors to a similar time frame. Further, parties are presumed to be ready for hearing at the time the complaint is filed, in light of the 45-day decision timeline, and while settlement is laudable, assessments acquired for settlement purposes after the complaint is filed are generally not relevant to the issues at hearing. In sum, nothing in the IDEA can be read as authorizing that hearings be continued indefinitely under these facts, and the parties will have had five months from the date of filing to complete a settlement. This matter will be set as follows:

Second Mediation:	Not requested. The hearing dates will not be continued on the ground that a second mediation did not occur.
Prehearing Conference:	June 10, 2013 at 10:00 AM
Due Process Hearing:	June 17-20, 2013 at 1:30 PM first day, 9:30 AM other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

IT IS SO ORDERED.

Dated: March 01, 2013

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings